

REMARKS**Response to Double Patenting**

Claim 1 is provisionally rejected by the Examiner under 35 U.S.C. §101 as claiming the same invention as that of claim 1 of copending Application No. 10/658,911. Applicants have cancelled claim 1 without prejudice, so this rejection is moot.

Claims 42-47 are rejected by the Examiner under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 32-36, 41, 42, 45, and 46 of U.S. Patent No. 6,725,083. In response applicants have filed concurrently herewith a terminal disclaimer which should render this rejection moot.

Response to Claim Rejections Under 35 U.S.C. §102

Claims 1, 42-45 are rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,289,831. Applicants have carefully reviewed this reference in the light of the above amendments and believe that this reference fails to anticipate the presently pending claims. Specifically, the cited reference does not disclose a marker body that dissipates over time and that has a radiopaque element which is persistent. Moreover, the reference does not disclose or suggest a delivery tube having a plurality of marker bodies in which one of the marker bodies dissipates over time and has a radiopaque element.

Response to Claim Rejections Under 35 U.S.C. §103

Claims 46 and 47 are rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over US'831 in view of U.S. Patent No. 6,056,700 or WO 96/08208.

As discussed above, the primary reference (the '831 patent) fails to teach all the features of the claim 45 and the secondary references, the '700 patent and the WO '208 fail to make up for the deficiencies of the primary references.

Submission of Information Disclosure Statement

Applicants wish to bring to the attention of the Patent Office the references listed on the attached PTO-1449 form and request that these cited references be considered by the Examiner. Each reference listed in the attached was cited in a related application.

Conclusions:

Entry of the above amendments is respectfully requested. No new matter is introduced by these amended claims. Applicants believe that the pending claims are directed to patentable subject matter and request reconsideration and an early allowance thereof.

Respectfully submitted,

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